



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3631

by Rep. Marcus C. Evans, Jr.

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Tax Preparer Consumer Bill of Rights Act. Provides that a tax preparer shall post an identification and qualification statement on his or her business premises and shall provide the customer with a receipt containing an address and phone number at which the preparer can be contacted throughout the year. Requires the Department of Revenue to publish a consumer bill of rights regarding tax preparers in a newspaper of general circulation in the State. Provides that tax preparers must provide certain disclosures concerning refund anticipation loans. Provides that tax preparers may not engage in certain practices, including, but not limited to, asking a taxpayer to sign a blank or incomplete tax return, misstating the tax preparer's qualifications, charging a fee based upon the amount of tax owed or refund due, and making deceptive statements. Sets forth certain requirements for tax preparers. Contains provisions concerning penalties. Contains other provisions. Effective immediately.

LRB099 08842 HLH 29014 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Tax  
5 Preparer Consumer Bill of Rights Act.

6 Section 5. Definitions. As used in this Act:

7 "Department" means the Department of Revenue.

8 "Refund anticipation loan" means any loan a taxpayer may  
9 receive against his or her anticipated income tax refund.

10 "Tax preparer" or "preparer" means a person, partnership,  
11 corporation, or other business entity, that, for valuable  
12 consideration, advises or assists or offers to advise or assist  
13 in the preparation of income tax returns for another.

14 Section 10. Disclosure.

15 (a) A tax preparer who is required, pursuant to federal or  
16 State law, rule, or regulation, to sign income tax returns as a  
17 preparer shall prominently and conspicuously post on the  
18 business premises an identification and qualification  
19 statement. The statement shall include, but is not limited to,  
20 the name of the tax preparer, an address and phone number at  
21 which the tax preparer can be contacted throughout the year,  
22 and a statement of any qualifications possessed by the tax

1 preparer, which may include a statement of satisfactory  
2 completion of an educational or training program in income tax  
3 law, theory, or practice by the preparer. The statement shall  
4 be displayed at the public entrance to the tax preparer's  
5 business premises or in the immediate area where consumers  
6 arrive and are met for business purposes by the tax preparer.

7 (b) Except as otherwise provided in this Section, the sign  
8 shall be composed of proportionately spaced, upper-case black  
9 characters, sans serif, at least one-half inch high on a white  
10 background.

11 (c) The heading "IDENTIFICATION AND QUALIFICATIONS OF TAX  
12 PREPARER" shall appear at the top and center of the sign.  
13 Subsequent lines shall begin at the left-hand margin of the  
14 sign. The first line beneath the heading shall state the full  
15 name of the tax preparer. The second and third lines shall  
16 state the address at which the tax preparer may be contacted  
17 throughout the year. The fourth line shall state the telephone  
18 number at which the tax preparer may generally be contacted  
19 throughout the year during business hours. The fifth line shall  
20 begin with the caption "QUALIFICATIONS:" and be followed by a  
21 statement of the tax preparer's relevant training and  
22 experience. Such statement may consist of characters  
23 one-quarter inch high.

24 (d) A partnership, corporation, or other business entity  
25 operating as a tax preparer may satisfy the disclosure  
26 requirements of this Section by posting one sign, containing

1 its name, address, and phone number as set forth above, and a  
2 statement of the minimum qualifications possessed by all  
3 individuals who prepare or assist in the preparation of tax  
4 returns as an agent or employee of the partnership,  
5 corporation, or other business entity.

6 (e) The sign shall not contain language which falsely  
7 indicates that a tax preparer is licensed or in any manner  
8 approved or authorized to do business by the State.

9 (f) In addition, the tax preparer shall provide the  
10 customer with a receipt containing an address and phone number  
11 at which the preparer can be contacted throughout the year.

12 Section 15. Consumer bill of rights; notice. No later than  
13 the fifteenth of October of each year, the Department shall  
14 publish in a newspaper of general circulation in the State a  
15 statement of consumers' rights and laws concerning tax  
16 preparers to be called a "consumer bill of rights regarding tax  
17 preparers". The notice shall contain the following  
18 information:

19 (1) postings required by local, State, and federal  
20 laws, such as price posting, posting of qualifications, and  
21 any licenses and permits required for the operation of the  
22 business;

23 (2) explanations of some of the commonly offered  
24 services and industry jargon, such as preparation of short  
25 and long federal forms, refund, electronic filing, express

1 mail, direct deposit, refund anticipation loan, "quick",  
2 "instant", "rapid", "fast", fee, and interest;

3 (3) basic information on what a tax preparer is and is  
4 not required to do for a consumer, such as the preparer's  
5 responsibility to sign a return, and that a tax preparer  
6 may not be required to accompany a consumer to an audit;

7 (4) the telephone numbers of the Department for  
8 information and complaints; and

9 (5) a statement listing the types of information that  
10 the consumer has the right to receive from the tax preparer  
11 prior to becoming obligated to compensate the tax preparer  
12 for services rendered in connection with filing the  
13 consumer's income tax return with the appropriate  
14 governmental agencies.

15 In addition, the Department shall provide a copy of the  
16 consumer bill of rights regarding tax preparers to any  
17 requesting individuals or businesses within 14 days of such a  
18 request.

19 Section 20. Records. No tax preparer shall intentionally  
20 misstate or misrepresent any information relating to his or her  
21 education, training, or experience on an identification and  
22 qualification statement. A tax preparer shall maintain records  
23 to substantiate all of the information contained on such a  
24 statement; provided, however, that an affidavit signed by the  
25 tax preparer indicating that the information contained on a

1 statement is true shall be sufficient to substantiate any  
2 information if other records are not available. Such records,  
3 affidavit, or both shall be kept on file on the business  
4 premises and shall be presented on demand for inspection by the  
5 commissioner.

6 Section 25. Refund anticipation loans. Any tax preparer who  
7 advertises the availability of a refund anticipation loan may  
8 not directly or indirectly represent such a loan as a refund.  
9 Any advertisement which mentions a refund anticipation loan  
10 must state conspicuously that it is a loan and that a fee or  
11 interest will be charged by the lending institution. The  
12 advertisement must also disclose the name of the lending  
13 institution.

14 Before any taxpayer enters into a refund anticipation loan,  
15 the tax preparer facilitating the loan shall provide the  
16 following disclosure to the taxpayer in writing, in English and  
17 Spanish, in at least 14-point type. In the event that the  
18 taxpayer does not understand English or Spanish, the tax  
19 preparer shall also provide a point-by-point oral explanation  
20 of the following required disclosure in a language understood  
21 by the taxpayer:

22 "YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND  
23 ANTICIPATION LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED  
24 THIS INFORMATION.

25 IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN,

1 YOU WILL BE TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR  
2 REPAYMENT OF THE ENTIRE LOAN AMOUNT AND ALL RELATED COSTS AND  
3 FEES, REGARDLESS OF HOW MUCH MONEY YOU ACTUALLY RECEIVE IN YOUR  
4 TAX REFUND.

5 IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU  
6 ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY  
7 \$(insert amount).

8 IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL  
9 BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE LOAN.  
10 AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY  
11 \$(insert amount) AS YOUR LOAN.

12 THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND  
13 ANTICIPATION LOAN IS (insert percentage). THIS IS BASED ON THE  
14 ACTUAL AMOUNT OF TIME YOU WILL BE LENT MONEY THROUGH THIS  
15 REFUND ANTICIPATION LOAN.

16 IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN  
17 EXPECT TO RECEIVE YOUR LOAN ON (insert date).

18 IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU  
19 CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX  
20 RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE  
21 MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND ON (insert date).  
22 IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX  
23 REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT  
24 TO RECEIVE YOUR REFUND ON (insert date)."

25 It shall be the obligation of the tax preparer to complete  
26 the required disclosure accurately with all relevant

1 information for each taxpayer, to provide the required  
2 point-by-point oral explanation when necessary, and to ensure  
3 that the completed disclosure form is signed by the taxpayer  
4 before he or she enters into a refund anticipation loan.

5 Any person claiming to be injured by the failure of a tax  
6 preparer to act in accordance with this Section shall have a  
7 cause of action against such tax preparer in any court of  
8 competent jurisdiction for any or all of the following relief:

9 (1) compensatory and punitive damages;

10 (2) injunctive and declaratory relief;

11 (3) attorneys' fees and costs; and

12 (4) such other relief as the court may deem  
13 appropriate.

14 Section 30. Exceptions. This Act does not apply to:

15 (1) An officer or employee of a corporation or business  
16 enterprise who, in his or her capacity as such, advises or  
17 assists in the preparation of income tax returns relating  
18 to such corporation or business enterprise.

19 (2) An attorney who advises or assists in the  
20 preparation of income tax returns in the practice of law  
21 and the employees of that attorney.

22 (3) A fiduciary and the employees thereof who advised  
23 or assist in the preparation of income tax returns on  
24 behalf of the fiduciary estate, the testator, trustee,  
25 grantor or beneficiaries thereof.

1           (4) A certified public accountant and the employees  
2 thereof.

3           (5) An employee of a governmental unit, agency, or  
4 instrumentality who advises or assists in the preparation  
5 of income tax returns in the performance of his or her  
6 official duties.

7           (6) An agent enrolled to practice before the Internal  
8 Revenue Service.

9           Section 40. Tax preparation; practices.

10          (a) Tax preparers may not:

11           (1) ask a taxpayer to sign a blank or incomplete tax  
12 return;

13           (2) misrepresent their qualifications;

14           (3) reveal any information appearing on a tax return or  
15 any information gathered for its preparation, including  
16 the fact of preparation and the content of solicitation  
17 lists, to any person or business other than:

18                   (A) the taxpayer;

19                   (B) a person designated in writing by the taxpayer;

20           or

21                   (C) anyone authorized to receive such information  
22 by court order or by law;

23           (4) make any deceptive statement designed to persuade  
24 taxpayers to use, or not to use, a tax preparer;

25           (5) induce or attempt to induce a taxpayer to violate

1 any governmental law, rule, or regulation;

2 (6) use the word "accountant" in any advertisement  
3 unless at least one Certified Public Accountant or Public  
4 Accountant is present at each tax preparing location during  
5 all business hours. The accountant or accountants employed  
6 at that location must exercise control over all tax returns  
7 prepared at that location;

8 (7) use the term "expert", "master", "consultant",  
9 "specialist", or any similar terms in an advertisement  
10 unless the tax preparer's relevant education or experience  
11 is also disclosed in the advertisement and there is a  
12 reasonable basis for any claims of expertise;

13 (8) alter a tax return after it has been signed by the  
14 taxpayer, without the taxpayer's written consent; or

15 (9) charge a fee based upon the amount of tax owed or  
16 refund due.

17 (b) Tax preparers that advertise their tax preparation  
18 services in a manner designed to reach the general public must  
19 post the following information clearly and conspicuously in  
20 each office:

21 (1) exactly how their fees are computed; if there is a  
22 minimum fee for preparing a return, it must be disclosed;  
23 if the fee is variable, the factors upon which the  
24 variation depends must be disclosed;

25 (2) that the taxpayer is entitled to receive a copy of  
26 his or her tax return at the time the original is given to

1 the taxpayer for filing;

2 (3) that both the tax preparer and the taxpayer must  
3 sign every tax return;

4 (4) that the tax preparer is not a certified public  
5 accountant or a licensed attorney in Illinois, if such  
6 information is true; and

7 (5) that the tax preparer or an agent will not  
8 represent the taxpayer at any audit, if such information is  
9 true; for the purposes of this item (5), "represent" means  
10 to appear before any government tax administering  
11 authority as an attorney, certified public accountant, or  
12 enrolled agent; failure to make this disclosure means that  
13 the tax preparer agrees to represent the taxpayer or to  
14 provide representation.

15 (c) Tax preparers must:

16 (1) sign every tax return prepared;

17 (2) give a copy the tax return to the taxpayer at the  
18 time the original tax return is given to the taxpayer for  
19 filing;

20 (3) provide the taxpayer with a statement of the  
21 charges for each tax return or schedule prepared; and

22 (4) return any of the taxpayer's personal papers upon  
23 request, when the original tax return is given to the  
24 taxpayer for filing, unless specifically permitted to  
25 retain those papers under State law.

26 (d) Tax preparers may not:

1           (1) guarantee a tax refund or guarantee that the  
2 taxpayer will not be audited by any government tax agency;

3           (2) request a taxpayer to assign to the preparer any  
4 portion of the refund due;

5           (3) use their addresses on a tax return as the place to  
6 which a refund should be mailed, unless the taxpayer has  
7 signed a power of attorney containing such authorization; a  
8 fiduciary with authority to handle a taxpayer's financial  
9 matters is not required to obtain this power of attorney;  
10 or

11           (4) claim to give taxpayers an "instant tax refund"  
12 that is actually an interest-bearing loan unless that fact  
13 is disclosed to the taxpayer in accordance with federal and  
14 State law.

15           (e) Each tax preparer shall retain a copy of every tax  
16 return prepared for a period of at least 3 years from the  
17 preparation date or the due date of the return, whichever is  
18 later.

19           (f) All disclosures required by this Section must be made  
20 in English and in any other language which the tax preparer  
21 uses to attract customers.

22           (g) Any individual or business which prepares income tax  
23 returns as an adjunct service to year-round fiduciary  
24 activities provided in the regular course of business for its  
25 customers is exempt from this Section. If the business also  
26 offers individual tax return preparation services which are not

1 related to such fiduciary activities, this Section applies to  
2 those services.

3 Section 45. Penalties. Any person, partnership,  
4 corporation, or other business entity who violates any  
5 provision of this Act rules adopted under this Act shall be  
6 liable for a civil penalty of not less than \$250 nor more than  
7 \$500 for the first violation and for each succeeding violation  
8 a civil penalty of not less than \$500 nor more than \$750.

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.